

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 154 of 1995

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

and

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

RAJESH @ RAJU CHANDULAL GANDHI

Versus

STATE OF GUJARAT

Appearance:

MR YS SONI for Appellant (appointed)
MR KT DAVE APP for Respondent No. 1

CORAM : MISS JUSTICE R.M.DOSHIT

and

MR.JUSTICE A.L.DAVE

Date of decision: 07/12/2000

ORAL JUDGEMENT (Per : MISS JUSTICE R.M.DOSHIT)

The learned advocate Mr. Y.S.Soni has been appointed to represent the appellant-Rajesh Chandulal Gandhi. Heard the learned advocate Mr.Soni for the appellant and the learned APP Mr. K.T.Dave for the State.

This appeal is directed against the judgment and order dated 28th December, 1994, passed by the learned Additional City Sessions Judge, Court No, 21, Ahmedabad, in Sessions Case No. 285/93. The accused-appellant Rajesh Chandulal Gandhi has been convicted for offence punishable under section 506 IPC, and has been sentenced with RI for one year. Feeling aggrieved, the accused has preferred the present appeal.

It was alleged that on 25th November, 1992, at around 8-15 in the evening, the accused attempted to commit murder of the complainant Girishbhai Ambalal Gandhi by firing from the revolver that the accused possessed. However, the complainant Girishbhai moved away and was thus saved. The accused had thus committed offence punishable under section 307 IPC. Moreover, on the said date and at the said time, the accused committed offence punishable under section 30 of the Arms Act by using the licensed firearm in contravention of the terms of the license. Considering the evidence on record, the learned trial Judge held that the prosecution had failed to prove that the accused had committed offence punishable under section 307 IPC, however, commission of offence punishable under section 506 IPC was proved. The trial court, therefore, convicted the accused for offence punishable under section 506 IPC and passed sentence of RI for one year as stated hereinabove.

The learned advocate Mr. Soni has taken us through the record and has strenuously urged that no offence has been proved against the appellant, and the appellant deserves to be acquitted of the charge framed against him.

The prosecution has examined three eye witnesses Sureshbhai Ambalal Gandhi (PW-4), Umaben Girishbhai Gandhi (PW-20) and Gajendrasing Swarupsing Rathod (PW-21). The Scientific Officer, Forensic Science Laboratory-Bharatbhai Kapilrai Mistry (PW-8) has been examined to prove that the bullet alleged to have been fired at the complainant was fired from the muddamal revolver. The evidence of the eye witnesses prove the presence of the complainant Girishbhai and the accused Rajubhai at the scene the offence. It also appears that

the incidence occurred on account of the niece of the accused Rajubhai one Namrata having eloped with Montu, the nephew of the complainant Girishbhai. The learned trial Judge has held that it was not proved beyond reasonable doubt that the bullet was fired at complainant Girishbhai with an intention to kill him. The learned trial Judge however has held that the accused Rajubhai may have fired a shot with a view to intimidating the complainant Girishbhai and his family members. Hence the learned Judge has held that commission of offence punishable under section 307 IPC was not proved. However, the accused had committed offence punishable under section 506 IPC. The accused is accordingly convicted for offence punishable under section 506 IPC and has been sentenced with RI for one year.

We are afraid, the reasoning adopted by the learned trial Judge is not sound. Having held that the muddamal bullet was not fired from the muddamal revolver for which the accused Rajubhai had license, the learned Judge could not have held that the fire was shot with a view to intimidating the complainant Girishbhai and his family members. This reasoning is self-contradictory and can not be sustained. We, therefore, set aside the conviction of the appellant-accused under section 506 IPC recorded by the learned trial Judge and the sentence passed upon him. The accused-appellant Rajesh Chandulal Gandhi is acquitted of the charge framed against him.

Appeal is allowed. The impugned judgment and order dated 28th December, 1994, passed by the learned Additional City Sessions Judge, Court No. 21, Ahmedabad, is quashed and set aside.

(MS R.M.DOSHIT J)

(A.L.DAVE J)

JOSHI